



**Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Northern Management Services, Inc.

**File:** B-261424

**Date:** June 26, 1995

Dan Deshon, Jr., for the protester.  
Richard J. Moen, Esq., and Emily C. Hewitt, Esq., General Services Administration, for the agency.  
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency reasonably determined that a performance bond is necessary for the 3-year base period of a building mechanical maintenance contract.

### DECISION

Northern Management Services, Inc. (NMSI) protests that the performance bond requirement in request for proposals (RFP) No. GS-10P-95-LSC-0046, issued by the General Services Administration (GSA) for mechanical maintenance services for seven federal buildings located in the Seattle, Spokane, Tacoma, and Auburn, Washington areas, unduly restricts competition to the prejudice of small business concerns.

We deny the protest.

The RFP, issued on an unrestricted basis, provides for the award of a firm, fixed-price contract for a base period of 3 years with two 3-year options. The contractor will be required to operate, maintain, and repair the buildings' equipment and systems, and provide operational tours, asbestos control procedures, architectural and structural maintenance, a refrigerant program, and water treatment. The RFP requires, among other things, that the contractor furnish a performance bond in an amount equal to 20 percent of the contract price for the 3-year base period of the contract.

NMSI protests that the performance bond requirement is unnecessary and unduly restricts competition by eliminating small business competitors who will be unable to obtain the required performance bond. The protester argues in the alternative that the awardee should only have to provide a performance bond for the first year of the contract.

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Although as a general rule contracting agencies are admonished not to require performance bonds in the case of nonconstruction contracts, Federal Acquisition Regulation (FAR) § 28.103-1(a), the regulations permit the use of bonding requirements where they are necessary to protect the government's interests. FAR § 28.103-2(a). In reviewing a challenge to the imposition of a bonding requirement as unduly restrictive of competition, we look to see if the contracting officer's determination that bonding is necessary is reasonable and made in good faith. Maintrac Corp., B-251500, Mar. 22, 1993, 93-1 CPD ¶ 257.

Here, the contracting officer reasonably imposed the bonding requirement. The agency explains that the purpose of the performance bond requirement is to ensure that the contractor will properly and continually maintain the mechanical systems of the buildings. GSA states that the failure to properly and continually perform the maintenance work in accordance with the terms of the RFP could result in equipment malfunctions, and lead to unsafe and unhealthy environmental conditions for government employees and other individuals who enter the buildings. For example, GSA points out here that "contaminated cooling towers, evaporative condensers, air washers and several other components of air conditioning systems [have been] found to be associated with outbreaks of Legionel Pneumophilia." The agency also states that the failure to perform the required mechanical maintenance services could cause damage to or the destruction of building equipment and systems, and result in the building being temporarily without heat, water, or air conditioning. The agency adds that such damage may require that the affected building or buildings be temporarily closed, thereby disrupting ability of the agencies to perform their mission, and that the repair of such damage could be costly.

We have recognized the reasonableness of imposing performance bond requirements where, as here, the continuous performance of critically needed services is absolutely necessary. Id. Additionally, we have held that even though a bonding requirement may restrict competition, possibly even to the exclusion of some small business concerns, that possibility alone does not render a bonding requirement improper. Id. As such, in our view the agency reasonably included the RFP the requirement that the awardee furnish a performance bond.

We also find that the 3-year base period of the contract years is the proper period on which to base the performance bond because if the contractor fails to perform, the government will need to reprocur for the entire 3 years. Fedserv Indus., Inc., B-222631, Aug. 19, 1986, 86-2 CPD ¶ 199.

The protest is denied.

\s\ Michael R. Golden  
for Robert P. Murphy  
General Counsel